



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Ms. Sage White
Assistant City Attorney
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR95-742

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32310.

The City of Austin (the "city") received an open records request for the personnel file of a police officer.¹ The requestor states, by his letter to the city seeking the personnel file, that the officer at issue arrested the requestor's client for criminal trespass. The requestor states in his letter to the city that a trial date has been set for prosecution of his client. You state that the police officer for whom the personnel file is requested will testify against the requestor at his criminal trial. You contend that information in the civil service personnel file, which is generally open and available to the public, in this case, may be withheld from required public disclosure pursuant to section 552.103(a) of the Government Code, commonly referred to as the litigation exception. You argue that the information in the officer's personnel file is related to issues that may be litigated and that these are records which the requestor should obtain through discovery, if at all. You have submitted for our review the responsive documents.

¹The city is a civil service city subject to chapter 143 of the Local Government Code. Pursuant to section 143.089 of the Local Government Code, the city may maintain two personnel files on its police officers. We assume that the information requested is all located in the officer's personnel file described by section 143.089(a), commonly referred to as the civil service file. Generally, the information contained in a police officer's civil service personnel file may be released without the officer's written permission if the Open Records Act requires disclosure of the information. See Open Records Decision No. 562 (1990) at 6.

Section 552.103(a) applies to information:

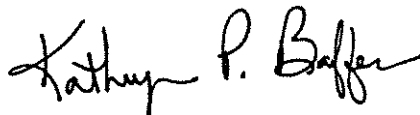
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103 is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. After reviewing the submitted documents from the officer's personnel file, we conclude that you may withhold the information pursuant to section 552.103 of the Government Code. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, or the litigation has ended, no section 552.103 interest exists with respect to that information.² Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/RHS/rho

Ref: ID# 32310

²We note that there may exist information in the responsive documents that must be withheld pursuant to various statutory confidentiality provisions even after discovery and after the litigation is completed.

Enclosures: Submitted documents

cc: Mr. David B. Frank
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Austin, Texas 78701
(w/o enclosures)